1951.

File No. Prohibition
II/51(N)
Legal Department
B **BRANCH**

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Subject:—

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Notifications under
the Bombay Prohibitio
Act, 194

File No. Prohibition II/51 (N)

Gen. 194 e.

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Legal Department.

Denatured spirit is a non-beverage. In this respect the High Court in the recent prohibition Test case has observed as follows:-

".....Therefore, in our opinion, while it was open to the Legislature to provide against the abuse of these articles (viz. eau-de-cologne or lavender water - both non-beverages), it was not open to it, to prevent its legitimate use. But the Legislature has totally prohibited the use and possession of all liquids containing alcohol except under permits to be granted by Government. It is contended by the Advocate General that a citizen may possess eau-de-cologne or lavender-water under a permit. But that is a restriction upon the right of the citizen to acquire, hold and dispose of property and in our opinion that restriction is not reasonable. The same argument applies to medicinal and toilet preparations containing alcohol. Therefore, we hold that to the extent to which the Prohibition Act prevents the possession, use and consumption of non-beverages and medicinal and toilet preparations containing alcohol for legitimate purposes, the provisions are void as offending against article 19(1)(f) of the Constitution even if they be within the legislative competence of the Provincial Legislature."

2. It was, therefore, pointed out to R.D. in L.D.No.16481 dated the 23rd November 1950 and No. 875 confl., dated 2nd December, 1950 that it will not be legal to put any restrictions on the possession of non-beverages for their legitimate use. Any restriction, therefore, on the possession of denatured spirit for domestic use would also be open to objection. Consequently any provision requiring persons to take out permits for the possession of denatured spirit for domestic use would not be legally in order.

3. However, as pointed out in the concluding sentence of L.D. Memo No. 875-Confl. dated the 2nd December 1950 Rpendix

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the decision of the appeal by the Supreme Court, instructions may be issued to the various officers to the effect that permits may be freely granted for the possession of denatured spirit for domestic use. Fees may also be accepted by the patels etc. as proposed in the G.R. at p. 19 ante. It will not be desirable, however, to give any publicity to the latter proposal as intended by R.D.

Sd/- J.R.Dhurandhar,
10/1.

Additional Secretary to Government.

U.R. to R.D. No. 727, dated the 12th January 1951.

4-Cs.

H.V.V.
3.7.56.

Office of the R.L.A.

The Government orders No. 10484/45(b) and No. 10484/45(dated the 1st April 1950 and 16th June 1949 respectively, exempted certain persons holding licences or permits from the provisions of the Bombay Prohibition Act. These orders were issued under clause (c) of section 139 of the Bombay Prohibition Act. As clause (c) of section 139 has been declared void by the Bombay High Court in the Prohibition case, it is proposed to issue similar orders under clause (d) of section 139 of the Act. That clause empowers the State Government, by general or special order, to exempt intoxicants or class of intoxicants from all or any of the provisions of the Act. The proposal of the R,D. to issue an order under this clause to exempt certain intoxicants from the provisions of the Act, in so far as they relate to certain transactions by certain persons, would be in reality an order to exempt certain person from the observance of the provisions of the Act. Such an order would, therefore, be considered as one issued under clasue (c) of section 139 of the Act, and is liable to be attached on the ground that it falls under a provision of law which has been held void by the High Court, The High Court's Judgment is under appeal to the Supreme Court and it is likely to be set aside. In any case, it would be desirable to wait till the appeal is decided by the Supreme Court. Till then no order, as proposed, should be issued.

Sd/- J.R.Dhurandhar,
24/3.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 4816, dated the 27th March 1951.

4-Cs.

M.V.V.
3/7.

Legal Department.

Section 120 of the Bombay Prohibition Act encroaches on the liberties of the subject and will therefore be strictly construed by the courts especially when that section empowers any police officer to enter any house or building. Unlike section 128, section 120 contains no specific provision authorising search of any building and therefore when it is necessary to search a building or house for any suspected article a warrant under section 128 will be necessary. No implied power for such search can be spelt out of section 120. When Legislature intends to give a police officer power to search any house, along with the power to enter the same, it makes specific provision for the same. See section 18 of the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948.

Sd/- J.R. Dhurandhar,
20/3.

Secretary to Government.

U.R. to R.D. No. 4622, dated the 22nd March 1951.

4-Cs.

M.V.V.
3/7.

Office of the R.L.A.

Presumably the licensees have not disposed of their stocks of foreign liquor as directed by the Director of Excise & Prohibition. They might against take the matter to the Court and, therefore, before an order of forfeiture is passed by the Director as proposed, it will be necessary to see that the action taken by him is strictly in consonance with the provisions of the Act.

2. The provisions of the Bombay Prohibition Act, 1949 (Bom. No. XXV of 1949), were recently under the scrutiny of the Bombay High Court and the Supreme Court. Section 59 of the Act under which it is contemplated to take the proposed action was not a ground of any attack. It is, however, possible that they might attack the validity of the Notices given by the Director of Excise & Prohibition, copies of which are at pp. 205 to 209. Sub-section (1) of section 59 of the Bombay Prohibition Act, 1949, provides that : "notwithstanding the fact that the period during which any licence, permit, pass or authorisation is to be in force has not expired, the Commissioner may direct the holder thereof to dispose of his stock of intoxicant or hemp or mhowra flowers before such date as may be specified in the order." It will be seen from the notices at pages 205-to 209 that the Director of Excise and Prohibition purports to act under section 59(1) of the Act. In paragraph 2 of his notice he has directed the licensees to dispose of all the stocks of foreign liquor before the end of June 1951, at the latest. In paragraph 3 of his notice he warns them that whatever stocks might remain with them undisposed of after the 30th June 1951 would be liable to forfeiture to the State Government. If paragraphs 2 and 3 of the

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notice are read together it would appear that no precise date has been specified before which the licensees should dispose of their stocks. The expression "before the end of June 1951, at the latest" would imply that the licensees should dispose of their stocks at any time before the end of June 1951 or at the latest on the 29th June 1951. In paragraph 3 of the notice warning is given that the stocks should not remain undisposed of after the 30th June 1951. This implies that the stocks can be disposed of on the 30th of June 1951. As the notices which may be deemed as orders are not free from ambiguity, it will be advisable to pass fresh orders in a regular form. Presumably the period for which the licences or the permits, as the case may be, were granted, has expired, and the Director can have recourse to thesecond part of sub-section (2) of section 59. That part provides that, on the cancellation or the x expiry of the period of any licence, permit, pass or authorization, the Commissioner may also direct that any stock of any intoxicant, hemp or mhowra xxxxx flowers remaining with the holder of the licence, permit, pass or authorization together with receptacles or packages thereof be forfeited to the State Government. The Director may pass a regular order under this paragraph for the forfeiture of the stocks in question and send copies thereof to the licensees concerned before the he takes any further action for their sale under sub-section(3) of section 59 of the Act.

Sd/- J.R.Dhurandhar,
24/7.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 11738, dated the 24th July 1951.

4-Cs.

M.V.V.
3/7/56.

Office of the R.L.A.

The draft letter at page 223 purports to state that the Director of Excise and Prohibition intends to issue instructions to the Collector of Bombay to grant possession permit for the period ending 31st of October 1951 in respect of foreign liquor stock in balance with the licensees. Although under section 9 of the Act, the Prohibition Officers are bound to follow the orders of the Director, it will be argued that clause (n) of section 139 cuts down the amplitude of the power conferred on the Director by section 9. Clause (n) of section 139 provides that notwithstanding anything contained in the Act the State Government may by general or special order, issue such other directions in any matter pertaining to the grant or otherwise of licences, permits, passes or authorizations under this Act as the State Government may deem proper, In view of this provision it is possible to hold that the instructions in matters pertaining to licences, permits, passes or authorizations can be granted only by the State Government. The proposed draft may not, therefore, be issued.

2. In place of the draft letter at page 225 the appended draft letter may issue.

3. Draft of the order, a copy of wich shall accompany the draft letter, referred to above is sent herewith.

4. In the event of the licensee not disposing of his stock of foreign liquor as directed by the Director it will be necessary for him to issue another Order under sub-section (2) of section 59 of the Act for forfeiting the stock of foreign liquor remaining undisposed after 31st October 1951. Draft of such Order is also sent herewith. This order should be issued after 31st October 1951.

Sd/- J.R.Dhurandhar,
4/9.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 14151-Confl. dated the 4th September 1951.
4-Cs./M.V.V./3.7

The draft order at page 239 ante, as amended, is in order.

2. Section 39, as it stands at present, provides that the State Government may on such conditions as may be specified in the notification published in the Official Gazette, permit the use or consumption of foreign liquor in military and naval messes and canteens. The section does not empower Government to lay down conditions for the sale of foreign liquor ~~in~~ in such messes and conteens. Consequently it would not be legally feasibly to provide for conditions on which sale of foreign liquor shall be made in such messes and canteens. The words "or sale" have, therefore, been deleted ~~in~~ from the draft notification at page ~~x~~ 239.

Moreover, the notifications on p. 159 ante and p.163 are inter dependant and the licence proposed to be issued under the proposed rules at p.163 ante provides for the conditions on which sale should be made of foreign liquor in military and naval messes and canteens.

3. The intention underlying condition 2 on page 239 ante, as proposed to be amended, appears to be that the sale of foreign liquor in a mess or canteen should also be subject to any rule, regulation and order issued in that behalf under any law applicable to the Armed Forces and any general or special orders issued by a competent Defence Force Authority. As the draft rules at p. 167 and the form of licence thereunder have not been issued so far, a condition may be inserted as condition 3 in the draft licence at page 169, to provide that sale of foreign liquor in a mess or canteen should be subject to such rules, regulations and orders. Condition 3 has accordingly been inserted in the draft licence at p.169 ante and subsequent conditions have been duly renumbered.

Sd/- J.R.Dhurandhar,
o 24/9.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 15314, dated the 25th September 1951.

4-Cs./M.V.V./3.7

Legal Department.

A revised draft notification is sent herewith.

2. The Revenue Department draft does not prescribe the form of the register to provide for the day to day accounts of the quantity of champagne sold of the balance held in stock which a licensee is required to maintain under rule 87 read with rule 82(3) of the Bombay Foreign Liquor Rules, 1950. Form E has therefore been added to the proposed forms of registers. The Revenue Department is requested to verify whether the Form is necessary and suitable.

3. As regard the proposal for fixing the scale of fees, attention is invited to the draft of the Bombay Foreign Liquor (Fees) Regulations, 1951, which were furnished to the Revenue Department with R.L.A.'s No. 6225, dated the 17th April 1951, which provide for prescribing fees for licences and permits granted under the said rules. It would therefore be more appropriate to insert in the said regulations (on the presumption that the said regulations have not yet been finally notified) another entry in the Schedule to the said Regulations to provide for prescribing fees in respect of licences granted under rule 77 of the said rules. A draft of the revised Schedule embodying such entry is therefore sent herewith, which should be substituted for the Schedule to the said regulations which were sent to the Revenue Department with the said R.L.A's opinion.

4. The Revenue Department draft at p.393 ante provides that the scale of fees payable by a medical practitioner in charge of Government institutions shall be nil. Rule 77 of the said rules provides for grant of a licence on payment of the fee prescribed by the Director. There is no provision in the Act empowering the Director to exempt any person from payment of licence fee. The provision for exemption in respect of Government institutions is therefore deleted from entry 6 of the revised Schedule sent herewith.

Sd/- S.L.Chaudhari,
4/10.
Deputy Secretary to Government.

U.R. to R.D. No. 15734, dated the 4th October 1951.

Sub-section (2) of section 60 of the Bombay Prohibition provides as follows :-

"60.(2) No person shall collect or transport or sell or have in his possession mhowra flowers exceeding the prescribed limit in weight except under the authority and subject to the conditions of a licence, permit or pass granted in this behalf;

Provided that no licence, permit or pass shall be necessary for the collection, transport, sale, purchase or possession within such area and during such period (hereinafter called vacation period) as the Provincial Government may, by notification in the Official Gazette, notify, of any quantity of mhowra flowers which shall be the produce of that year;

Provided further that unless the Provincial Government, by a notification in the Official Gazette, otherwise directs, no licence, permit, or pass shall be necessary for the transport by rail of any quantity of mhowra flowers through an area which has no vacation period or the vacation period for which has expired at the time when the transport takes place, provided that-

(i) the said flowers are not unloaded in transit, and

(ii) there is a vacation period at the place from which and to which the said flowers are transported at the time when the said flowers are despatched or arrive, as the case may be.'

The question raised by the Director of Excise is whether the transport from one area in respect of which a vacation period has been specified to another contiguous area in respect of which also a vacation period has been specified is permissible or not without a pass under the first proviso. The answer depends upon the fact how an area is described in the notification issued under the proviso to section 60(2). If the whole of a district has been specified as an area under sub-section (2) of section 60 ~~of~~ then within that district the transport without a pass is permissible and it cannot be prohibited; but transport to another district so specified under the said sub-section would require a pass as the second area is distinct from the first area. Similarly if the compact area consists of one or two or more talukas of the same District then within that single taluka or more talukas transport without a pass is permissible and cannot be prohibited. But the transport to another taluka

in the same district or in another district would require a pass. The first proviso of sub-section (2) of section 60 of the Act is however controlled by the second proviso and even though under the first proviso a pass from one compact area to another compact area is necessary, under the second proviso, for a direct transport through an area which has no vacation period (or the vacation period for which has expired) no pass is necessary if at the place from which mhowra flowers are transported there is a vacation period and at the place to which they are transported there is also a vacation period. The effect of the second proviso is that if at the two terminal places there is a vacation period then a direct transport from one area to the other can be made without a pass through the intervening area. Government, however, posses the power under the second proviso to direct that the pass for transport through an area which has no vacation period shall be necessary. It is intended now to exercise the said power. The draft notification at page 281 is in order.

Sd/- J.R. Dhurandhar,
3/11.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 17544, dated the 5th November 1951.

4-Cs.

M.V.V.
4/7.